Supreme Court, U.S.
FILED

(1) 01-864 SEP 07 2001

OFFICE OF THE

IN THE
SUPREME COURT OF THE UNITED STATES
October Team

FERNANDO MARCELLA
PETITIONER

V.

KEVIN MURPHY, ET AL.,
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI

TO THE COURT OF APPEALS

FOR THE FIRST CIRCUIT

FERNANDO MARCELLA
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401-333-0724

30 pp

QUESTIONED PRESENTED

In a civil rights police misconduct case, did the court of Appeals err in not admitting into evidence the disposition of criminal charges against the plaintiff in the civil rights case, who was the defendant in the criminal case, when both the criminal charges and the civil rights allegations arose from the same basic set of events.

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Federal Rule of Evidence 401

Rhode Island General Law 12-10-12

I. REFERENCE TO OPINIO[illegible]N THE CASE

The case below was decided by the United Sates of Appeals for the first Circuit in an unreported decision, Fernando Marcella v. Kevin Murphy, et al. (1st Cir. June 12, 2001).

II. BASIS FOR THE JURISDICTION OF THIS COURT

The judgement in this case was entered on June 12, 2001, by the United States courts of appeals for the first Circuit.

This Court has jurisdiction to review the judgement in question by writ of certiorari pursuant to 28 U.S.C. - 1254.

III. THE STATUTES INVOLVED

Federal Rule of Evidence 401

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rhode Island General Law 12-10-12:

(a) Subject to any other provisions of law relative to the filing of complaints for particular crimes, any judge of the district court or superior court may place on file any complaint in a criminal case other than a complaint for the commission of a felony or a complaint against a person who has been convicted of a felony or a private complaint. The court may in its discretion require, as a condition of a filing, the performance of services for the public good or may attach any other conditions it determines. In cases where the court orders restitution totaling less than two hundred dollars (200) to an injured party pursuant to this section

or 12-19-34, the court shall require that full restitution be made at the time of sentencing if the court determines that the defendant is able to make that restitution at that time.

(b) It is an express condition of any filing in accordance with this section that the defendant, at all times for one year, keeps the peace and is of good behavior. A violation of that express condition or any other condition set by the court is a violation of the filing, and the matter may be resurrected by the court. A determination of whether a violation has occurred shall be made by the court in accordance with the procedures relating to a violation of probation, 12-19-9 and 12-19-14.

(c) In the event the complaint was originally filed under this section subsequent to the defendant's plea of guilty or nolo contendere to the charges, the court, if it finds there to have been a violation, it may proceed to the further disposition of the complaint according to law. If no action is taken on the complaint for a period of one year following the filing, the complaint shall be expunged pursuant to the provisions of chapter 1.3 of this title. Further, if any record of the complaint has been entered into a docket or alphabetical index, whether kept in writing or in an electric information storage system or other data compilation system. All references to the identity of the person charged by the complaint shall be removed from the docket or index. No criminal record shall result, unless in any civil action for a tort, in which a plea of guilty or a finding of guilty is admissible notwithstanding the fact that the complaint has been filed.

IV. STATEMENT OF THE CASE

The plaintiff filed a complaint against Kevin Murphy, a police officer employed by the town of Lincoln, making sundry allegations against said officer. The case was presented to the jury on two claims against officer Murphy, excessive force and false arrest.[1] The jury returned a verdict for the defendant Murphy at.

the conclusion of the trial.

The plaintiff alleged in this case that he was falsely arrested and that excessive force was used in the course of his arrest. The defendant was charged in the State District Court with assaulting a police officer and resisting arrest. He sought to introduce into evidence what happened as a result of those charges, both through his own testimony and through the documentation showing the disposition of these charges. The Court refused to allow him to do so on both occasions. This petition is based on the exclusion of this evidence.

V. REASON FOR GRANTING THE WRIT

A. Introduction

This case was a credibility contest. There was an altercation between the plaintiff and the police. Almost every aspect of the altercation is disputed. To illuminate the dispute, the plaintiff sets forth below two versions of the facts, his version and the police version.

B. PLAINTIFF'S VERSION

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[1]There was also a civil rights complaint against the Town of Lincoln and William Strain, the Chief of the Lincoln police. The Court granted the motion for judgement as a matter of the law against the Town and William Strain.

On April 7, 1998, about 6:30 p.m. The plaintiff was driving home in the Town of Lincoln, where he had lived for 15 years, App. at 27; Tr. of June 26 at 22. He was alone in his car. App. at 25, 27;Tr.of June 26 at 20,22. There was a problem with his car radio. He signaled, and safety pulled over, away from the pavement. App. at 28; Tr. of June 26 at 23. A police cruiser driven by defendant Kevin Murphy had been following the plaintiff. App. at 27; Tr. of June 26 at 22. He exited his car and went to the rear of the vehicle. The plaintiff testified that he believed that items in the trunk of his car might have been the source of his car radio problem. App. 28; Tr. of June 26 at 23.

The plaintiff testified that defendant Murphy pulled behind him, exited his car, and approached him. App. at 31-32; Tr. of June 26 at 26-27. The plaintiff testified that the defendant grabbed the keys out of his hand, accompanied with a vulgar demand for the keys. App. at 33; Tr. of June 26 at 28. The plaintiff testified that the officer then proceeded to grab him, push him against the car, and hit him in the back with his knee. App. at 33; Tr. of June 26 at 28. The plaintiff testified that he was further struck and pushed to the ground and kicked.

The officer came down on his back, punched him and proceeded to push his face in to the dirt with force causing the plaintiff to loose consciousness and also causing an injury to his right eye. Soon after the plaintiff testified that other police officer got on top of him and after he was handcuffed officer Murphy sprayed his face with a chemical, pushed him into a police cruiser and drove him to the police station. Plaintiff also testified that in the cell another officer, ripped his shirt and violently pushed him against the block wall in the cell smashing his head against it. App. at 34: Tr. of June at 29.

C. Defendant (Police officer) Version

The defendant testified that he first noticed the plaintiff's vehicle because it was going slowly. App. at 106; Tr. of June 26 at 101. He testified that the vehicle stopped abruptly with the front of the car on the dirt, but the rear of the vehicle stuck out into the road blocking the left lane. App. at 106; Tr. of June 26 at 101. He testified he was forced to activate his emergency lighting to alert other vehicles. App. at 106; Tr. of June at 101. He testified that he did not know the driver of the vehicle. App. at 107; Tr. of June 26 at 102.

The defendant testified that the plaintiff approached him, refused his directive to get back in his car, and continued to walk towards the defendant, saying on more than one occasion, "You can't do anything to me." App. at 108-109; Tr. of June 26 vat 103-104. Officer Murphy, the defendant, also testified that he noticed that the inside door panel to the car driven by the plaintiff was missing, there were wires hanging out, and he thought there was a possible problem with the vehicle. App. at 108; Tr. of June 26 at 103.

Officer Murphy testified that as the plaintiff approached him and closed the distance between them, the police officer put out his hand in a defensive move. App. at 109; Tr. of June 26 at 104. The officer testified that at that point the plaintiff grabbed the officer's arm and that the officer than grabbed onto him and put the plaintiff onto the back of the car. App at 109; Tr. of June 26 at 104. The officer testified that he told the plaintiff to stop resisting and calm down, but the plaintiff refused. App. at 109; Tr. of June 26 at 104. The officer testified that a struggle ensued, with both parties ending up on the ground. App. at 110-112; Tr. of June 26 at 105-107. The officer testified that he finally sprayed the plaintiff with

capstun, a chemical agent. App. at 112-113; Tr. of June 26 at 107-108. He testified that the plaintiff was finally handcuffed, trans ported to the police station, and processed. App. at 114-116; Tr. of June 26 at 109-111. Processing was described to the injury as involving photographing, fingerprinting, and writing down information. App. at 116; Tr. of June at 111.

D. Argument

As a result of the altercation that was the basis of the events in this case, the plaintiff was charged with simple assault and resisting arrest. App. at 47; Tr. of June 26 at 42. He was not allowed to testify about disposition of those charges. App. at 47; Tr. of June 26 at 42. The plaintiff also sought to introduce into evidence Exhibit 26, the documents showing the disposition of the criminal charges against him. App, at 151; Tr. June 27 at 5. The court noted that it had reviewed the document and spent time with counsel in chambers regarding the admission of the document. App. at 151; Tr. of June 27 at 5. The court ruled that the document was not relevant and therefore would not be admitted. App. at 151-152; Tr. of June 27 at 5-6. The document is reproduced in the addendum at pp. 2-7.

The jury in this case knew the plaintiff had been arrested. The information was conveyed to them by the plaintiff who testified he was arrested and charged with assault and resisting arrest. App. at 47; Tr. of June 26 at 42. As a practical matter, the testimony of the defendant also told the jury there was an arrest, even if he did not use the precise language denoting an arrest for a particular crime. He testified that the plaintiff was handcuffed, transported to the police station, photographed and fingerprinted. In effect, the jury was told again that the plaintiff was charged with the commission of a crime. The question this case presents is whether or not the information as to the disposition of those charges is revellent.

Under Federal Rule of Evidence 401, the question is would the evidence "....make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." The court of Appeals has said:

> The trier (of fact) must be sufficiently informed of the under lying relationships, circumstances and influences operating on a witness so that, in light of his experience, he can determine whether a mutation in testimony could reasonably be expected as aprobable human reaction. (citation omitted).

United States v. Balsam, 203 F. 3d 72, 85 (1st Cir. 2000), citing United States v. Robinson, 174 U.S. App. D.C. 224, 530 F. 2d 1076, 1079 (D.C. Cir, 1976). The quoted passage was referring to the right to show the basis of a witness.

In this case, the interest of the witness, officer Murphy, was also of paramount concern. In this regard, the outcome of the criminal charges lodged against the plaintiff was relevant. Exhibit 26 makes clear that the charge of assaulting officer Murphy was dismissed and the charge of resisting arrest was filed for one year. Moreover, the jury was aware the plaintiff had been charged. In such a situation, for the jury to be aware that the plaintiff had been charged, but not to inform the jury of the outcome of the charges was to leave the jury uniformed about one of the central aspects of the whole confrontation between the parties. To inform the jury of the outcome of the criminal charges against the plaintiff would enlighten the jury on both issues presented to them, the false arrest and excessive force claims. The information not admitted would put the entire event between the plaintiff and the defendant Murphy in context. For these reasons the evidence should have been allowed.

The Court of Appeal held that the nature of filing of one charge in this case and the dismissal of the other precluded drawing an inference as to the consequence of the disposition in a manner that would assist in the determination of the plaintiff's allegations against the police. The Court of Appeals, in effect, was saying this was a disposition whose meaning was not absolutely plain and would require elucidation. This argument supports admission of the disposition, with all parties being afforded an opportunity to explain the disposition to the jury. Just because the evidence is potentially complex or ambiguous is not a reason to exclude the evidence, but rather a reason to admit the evidence, with the opportunity to explain the same.

VI. CONCLUSION

For the reasons set forth above, the petitioner urges that this court grant certiorari to determine whether the action of the Court of Appeals for the First Circuit as set forth above were in error.

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Appendix 1

UNITED STATES COURT OF APPEALS
For the First Circuit

FERNANDO MARCELLA,
Plaintiff, Appellant,

v.

KEVIN MURPHY, ET AL.,
Defendants, Appellees,

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

(Hon. Mary M. Lisi, U.S. District Judge)

Before

Selya, Curcuit Judge,
Campbell and Stahi, Senior Circuit Judges.

Fernando Marcella on brief pro se.
Marc Desisto on brief for appellees.

June 12, 2001

Appendix 2

Per Curiam, After carefully reviewing the record and briefs on appeal, we affirm the decision below.

We are satisfied that the evidence showing the prior disposition of the two criminal charges against Marcella was immaterial and was properly excluded by the district court. The disposition sought to be placed in evidence was dismissal of the criminal assault charge coupled with the one- year filing under R.I.G.L. 12-10-12 of the charge for resisting arrest. This disposition must be viewed in light Marcella's past illness and the likely interest of those concerned to ettectuate a non-criminal disposition consistent with this pragmatic plea arrangement that the prosecution was or was not conceding anything as to the underlying truth of the assault charge. Dismissal of that charge cannot be viewed in isolation from continued retention for possible prosecution within one year of the resisting arrest charge. We note that defendant Murphy testified in the instant case that he arrested Marcella because Marcella's alleged assault upon him. Had the resisting arrest charge been prosecuted during one-year following the disposition, the government would presumably have expected to seek to prove the assault as constituting a lawful basis for the

arrest. Hence, we cannot say that admission of evidence of this prior disposition of the criminal charges would "make...the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence," Fed. R. Evid. 401. We hold that the district court acted properly within its broad discretion to exclude the evidence in question. Faigin v. Kelly, 184 F. 3d 67. 79-80 (1st cir. 1999).

Affirmed. Loc. R. 27 (c)

Appendix 4

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

FERNANDO MARCELLA,
Plaintiff-Appellant,

v.

KEVIN MURPHY, ET AL.,
Defendants-Appellees.

Judgment

Enter: June 12, 2001

This cause came on to be submitted on the briefs and original record on appeal from United States District Court for the District of Rhode Island.

Upon consideration whereof, it is now here order, adjudged and decreed as follows: The judgment of the district court is affirmed.

By The Court:

Phoebe D. Morse, Clerk

By: Janice M. Oneal
Cheif Deputy Clerk

(cc: Messrs. Mercella and Desisto)

Appendix 5

AO 450 (Rev. 5/85) Judgment in a Civil Case

United States District Court

District of Rhode Island

FERNANDO MARCELLA

V.

KEVIN MURPHY, et als

JUDGMENT IN A CIVIL CASE

CASE NUMBER: CV 99-487 ML

☒ **Jury Verdict.** This action came before the court for a trail by jury. The issues have been tried and the jury has rendered its verdict.

☐ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Judgment is entered for the defendant, Kevin Murphy, in accordance with the jury verdict form entered on June 27, 2000.

June 28, 2000
Date

David A. DiMarzio
Clerk

Dawn Delano
(by) Deputy Clerk

Supreme Court, U.S.
FILED
JAN 7 2002
CLERK

(2)

No. 01-864

IN THE

Supreme Court of the United States

FERNANDO MARCELLA,

Petitioner,

v.

KEVIN MURPHY, alias JOHN DOE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION

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Rules:

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REASON FOR DENYING THE WRIT

The sole issue presented by the *pro se* Petition is whether the trial court erred in its determination that the disposition of the criminal charges against petitioner was irrelevant to his claim for false arrest under 42 U.S.C. § 1983. Petitioner specifically asks this Court for writ to review whether:

> [i]n a civil rights police misconduct case, did the Court of Appeals err in not admitting into evidence the disposition of criminal charges against the petitioner in the civil rights case, who was the defendant in the criminal case, when both the criminal charges and the civil rights allegations arose from the same basic set of events.

Petition for a Writ of Certiorari to the Court of Appeals for the First Circuit, at i.

This issue raises a pure evidentiary question relating to whether such information is relevant to the underlying action. Rather than raising an important, unsettled question of federal law or resolving a conflict between the Circuits, this issue involves the application of well-settled evidentiary principles. The First Circuit properly applied the relevancy principles and correctly held that the disposition of the charge was inadmissible. Consequently, there is no compelling reason to grant the instant Petition for Writ of Certiorari and Respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

On or about October 6, 1999, petitioner filed a Complaint against Kevin Murphy, a police officer with the Town of Lincoln, Lincoln Police Chief William P. Strain, and the Town of Lincoln, Rhode Island. Petitioner specifically alleged, *inter alia*, that Officer Murphy violated petitioner's constitutional rights by falsely arresting petitioner on April 7, 1998. Petitioner further alleged that Officer Murphy used excessive force in arresting petitioner and subsequently failed to provide medical treatment for petitioner.[1] Petitioner likewise sought to recover against the Town of Lincoln and Chief William Strain under 42 U.S.C. § 1983.

On June 26 and 27, 2000, a jury trial was held in the U.S. District Court for the District of Rhode Island. At the close of petitioner's case, judgment as a matter of law was granted on behalf of the Town of Lincoln and Chief William Strain. Transcript (hereinafter "Tr."), at 153. On June 27, 2000, the jury returned a verdict in favor of Officer Murphy and judgment entered accordingly. On July 5, 2000, petitioner filed a motion for a new trial which was denied on July 17, 2000.

On July 26, 2000, petitioner filed an appeal to the First Circuit from the entry of judgment in favor of Officer Murphy.[2] On January 29, 2001, the First Circuit, in

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1. Petitioner had also originally brought a claim under Rhode Island Civil Rights statute, R.I.G.L. § 42-112-1, *et seq*. This claim, however, was voluntarily dismissed at the time of trial. Tr. at 101.

2. On appeal, petitioner did not challenge the entry of judgment as a matter of law on behalf of the Town of Lincoln and Chief William Strain.

accordance with F.R.A.P. Rule 34(a), took the appeal on the submission of the briefs without oral argument. Thereafter, on June 12, 2001, the First Circuit issued a *Per Curiam* decision affirming the judgment in favor of defendant Kevin Murphy.

STATEMENT OF THE FACTS

Viewing the evidence in the light most favorable to the jury's verdict, *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993); *Gil de Rebollo v. Miami Heat Associations, Inc.*, 137 F.3d 56, 63 (1st Cir. 1998), the evidence reveals that on April 7, 1998, Patrolman Kevin Murphy was on regular patrol driving north on Route 246 when he encountered a brown Lincoln Town car traveling directly in front of him. Tr. at 105 & 106. Officer Murphy noticed the vehicle because it started to slow down until it was traveling 10 mph. This caused the officer and the traffic behind him to likewise slow. *Id.* The driver of the vehicle then suddenly pulled sharply to the side of the road, stopping his vehicle with its back tires blocking the left lane and its front tires on the dirt along the side of the road. *Id.*

Believing that the driver either needed directions or was experiencing car problems, Officer Murphy stopped his own vehicle ten (10) to fifteen (15) feet behind the Lincoln. *Id.* Officer Murphy simultaneously activated his overhead, emergency lights as precautionary measure, to warn the traffic behind him that he was stopping and as a signal for other drivers to avoid the disabled vehicle. *Id.* After Officer Murphy radioed to the station that he was with a possible "disabled motor vehicle" (DMV), the driver of the Lincoln, the petitioner, got out of his car and stood in the middle of the road. *Id.* at 107. The petitioner looked directly at Officer

Murphy with a menaced and disturbed look. *Id.* Officer Murphy, still not sure why the petitioner stopped, began to approach petitioner, asking him what was wrong or if he could help him with anything. The petitioner started yelling, "You can't do anything to me!" *Id.*

At this point, Officer Murphy noticed that the inside of the driver's side door had been pulled apart and there were wires hanging out. *Id.* at 108. Due to petitioner's bizarre behavior and the condition of the car, Officer Murphy felt that petitioner did not want to be caught driving because he had either been drinking or because the car was stolen. *Id.* Officer Murphy then told petitioner to get back into his vehicle. Rather than comply with the officer's direction, petitioner, in an irrational manner, again yelled "You can't do anything to me!" and started walking towards the officer. *Id.* at 109. Officer Murphy repeated his order for petitioner to get back into his vehicle, but petitioner simply kept repeating his chant "You can't do anything to me!" and moving towards the officer. Raising his hands as he approached the officer, petitioner closed the gap between himself and the officer quickly. *Id.* Officer Murphy, his hand outstretched to keep the petitioner away from him, took a step back. Petitioner, however, was able to grab the officer's outstretched arm. Officer Murphy reacted instantly with a defensive move, grabbing petitioner's arm and attempting to place petitioner in a restraining bear hug. Officer Murphy still had no idea why petitioner was acting the way he was, so Officer Murphy kept repeating for petitioner to calm down. Petitioner, however, fought with the officer. The two (2) wrestled for several minutes. *Id.* When Officer Murphy attempted to put petitioner on the hood of the cruiser, the two fell to the ground and petitioner had the wind knocked out of him temporarily. *Id.* at 110. This enabled Officer Murphy to broadcast a call for help over his hand radio, attached to his lapel. *Id.*

Prior to receiving Officer Murphy's call, however, the Lincoln police department had received several 911 calls from neighbors and people passing by in their cars, describing the violent struggle by petitioner. *Id.* at 137-138. Lieutenant Riel, the officer in charge on that evening, accordingly had dispatched officers to assist Officer Murphy before receiving Officer Murphy's call. *Id.* While petitioner and Officer Murphy were struggling, petitioner continually yelled, "Police brutality!" After several futile commands for petitioner to calm down, Officer Murphy finally used his capstun (pepper gas) in an attempt to curtail petitioner's violent struggle. However, it did not have any effect on the petitioner, who seemed to be very enraged and agitated. *Id.* at 113.

When Lincoln Police Officers Philip Gould, William S. Strain and John McRoberts arrived, Officer Murphy was still struggling with petitioner. It subsequently took two (2) officers to restrain petitioner and place him in handcuffs. *Id.* at 113-114. Once the petitioner was handcuffed, he started kicking and spitting, and refused to be placed into the rear of the police cruiser. It subsequently took all four (4) Lincoln police officers and a State Trooper who had arrived, to place petitioner in the cruiser. *Id.* at 115. Petitioner was advised that he was being arrested. Once in the car, petitioner continued to scream and yell. *Id.*

Upon arriving at the police station, Lieutenant Riel spoke with petitioner while he was still in the police cruiser in an attempt to calm him down. *Id.* at 139. Due to his combative state, petitioner was immediately placed in the cell. *Id.* During this time frame, petitioner continued to scream, yell and threaten the officers. *Id.* at 142. When petitioner finally calmed down, Lieutenant Riel allowed the petitioner to come

out of the cell to make a phone call. *Id.* at 141-142. After making the call, petitioner refused to go back into his cell. *Id.* at 66 &142-143. Once again, the officers had to use force to place the petitioner back into his cell. *Id.* at 143.

At trial petitioner, in addition to admitting to having been diagnosed with paranoid schizophrenia, *Id.* at 53, confirmed that he had many encounters with the Lincoln police prior to April 7, 1998, and that he blamed the police department for many of his misfortunes, *Id.* at 50-58. Petitioner was specifically upset with the Lincoln Police department's handling of his complaint that his children had been "medically tampered" or cloned by the Bethesda Memorial Hospital. *Id.* at 53. According to petitioner, after promising to look into the allegation, the Lincoln police tricked him into being brought to the hospital. *Id.* at 54.

Petitioner also held the Lincoln police department responsible for his attempted suicide in 1993. *Id.* at 51. In 1993, Mrs. Marcella had contacted the Lincoln police to help stop petitioner from leaving for California. After speaking with petitioner and his wife, the officers took petitioner to the hospital for observation. Later that same day, after being released from the hospital, petitioner attempted to jump from the Route 295 overpass. *Id.* Petitioner alleged that his suicide attempt was in response to the police officers' attempt to get him help by bringing him to the hospital. *Id.* Petitioner also held the police department responsible for his subsequent admittance to Butler Hospital, a psychiatric hospital. Petitioner also informed the jury that he believed that the police department conspired with his daughter and hospital officials to gain control of his bank book. *Id.* at 51–52. Petitioner also held the police department responsible for ruining his relationship with his daughter.

In particular, petitioner maintained that the police department encouraged his daughter to falsely accuse him of inappropriately touching her. *Id.* at 56. His daughter no longer speaks to him. *Id.* at 57.

Therefore, as petitioner testified at trial, the police were present and involved, to some extent, in the various incidents in petitioner's life that either led to his hospitalization or amounted to his misfortune. Petitioner thus held the police department responsible for these incidents.

As a result of his actions on April 7, 1998, petitioner was charged with simple assault and resisting arrest. Prior to going to trial on these charges, however, petitioner agreed to have the resisting arrest charge filed for one (1) year on his plea of not-guilty pursuant to R.I.G.L. § 12-10-12 and the corresponding simple assault charge dismissed. Section 12-10-12 of Rhode Island General Laws provides an alternative to an offender facing a determination of guilt or innocence of the criminal charge. When a plea is entered pursuant to this section, the criminal charge is "filed" for one (1) year. During that time frame, the offender must continue to maintain the peace. The filing of a criminal complaint under R.I.G.L. § 12-10-12, however, only delays the disposition of the charges. As noted by the Rhode Island Supreme Court, "[t]he filing of a complaint [under § 12-10-12] is a disposition tool that, in appropriate cases, affords defendants the opportunity to make a new beginning without carrying forth the weight of a criminal record for the rest of their lives." *State v. Olink*, 507 A.2d 443, 446 (R.I. 1986). If an offender fails to maintain the peace, the criminal charge that has been previously filed will be resurrected and the suspect will proceed through the normal court process. In the instant case, petitioner successfully maintained the peace during the one (1) year time frame and the charge of resisting arrest was subsequently dismissed in accordance with R.I.G.L. § 12-10-12.

ARGUMENT

I. THE DISPOSITION OF THE CRIMINAL CHARGES WAS PROPERLY EXCLUDED

Petitioner seeks a writ to review the lower court's determination that the disposition of the criminal charges pursuant to R.I.G.L. § 12-10-12 was irrelevant to the § 1983 claim against Officer Murphy. This issue does not involve unsettled or unique questions of law. Rather, resolution of the instant issue hinges upon the application of well-settled evidentiary principles. Respondent submits that the trial court properly applied these evidentiary principles in deciding to exclude the disposition of the criminal charges. More precisely, the issue before the jury related to whether there was probable cause to arrest petitioner on April 7, 1998, and whether excessive force was used in effectuating this arrest. The ultimate disposition of the criminal charges brought against petitioner, especially one that did not resolve the guilt or innocence of petitioner, is irrelevant to these issues. In addition, the introduction of this disposition would have only served to mislead and confuse the jury. Consequently, the trial court did not abuse its discretion in refusing to admit such evidence at trial. *Faigin v. Kelly*, 184 F.3d 6, 79-80 (1st Cir. 1999).

A. Guilt or innocence of the criminal charges is irrelevant to whether there was probable cause to arrest petitioner

Petitioner seeks to recover against Officer Murphy for an alleged false arrest and use of excessive force in effectuating this arrest. Claiming that these actions amount

to a violation of petitioner's constitutional rights, petitioner thus alleges that he is entitled to damages pursuant to 42 U.S.C. § 1983. In order to maintain a claim for false arrest under § 1983,[3] petitioner must establish that the officers lacked probable cause to detain him. Subjective intentions play no role in ordinary, probable cause Fourth Amendment analysis. *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769, 1774 (1996). Rather an objective test must be applied. The question is whether another officer standing in the shoes of these defendants and having the same information these defendants had, would reasonably have come to the conclusion that there was probable cause to arrest and detain the petitioners. *Floyd v. Farrell*, 765 F.2d 1, 5 (1st Cir. 1985) "Probable cause exists when facts and circumstances within the arresting officers knowledge and of which he has reasonably trustworthy information are sufficient to warrant a man of reasonable cause and prudence in the belief that the defendant is committing or has committed a crime." *Id.*

Thus, the guilt or innocence of the underlying charge is not relevant to the determination of whether the officer falsely arrested the individual. *See Moody v. McElroy*, 513 A.2d 5, 10 (R.I. 1986). *Cf. Meehan v. Town of Plymouth*, 167 F.3d 85 (1st Cir. 1999) *(summary judgment in favor of officers appropriate even where state criminal conviction overturned on appeal).*

Rather, the liability of the officer is resolved by a determination of whether the information in the officer's possession at the time of the arrest would lead a reasonable

3. Petitioner also brought a state law claim for false arrest and assault and battery. At trial, counsel agreed to submit the case to the jury on the § 1983 claims alone in that the state law claims were essentially subsumed under the umbrella of the § 1983 claim. Tr. at 101.

officer to believe that a crime had been committed and the petitioner committed the crime. Petitioner's plea arrangement after the fact is not relevant to this determination. Thus, the trial court did not abuse its discretion by excluding the disposition of the criminal charges from the instant case.

In support of his petition for writ of certiorari, petitioner nevertheless argues that the disposition of the criminal charges against petitioner was relevant in that it bore on the bias and credibility of the witnesses. Petitioner further maintains that without such information the jury was denied information "about one of the central aspects of the whole confrontation between the parties." Appellant's Petition, at 9.

It is difficult in the first instance to discern how this plea agreement bears on the bias or motive of Officer Murphy. There has been no evidence proffered to demonstrate that Officer Murphy was involved in the decision to accept the not-guilty filing or to dismiss the remaining charge. Petitioner thus appears to be arguing that the disposition bore on petitioner's own credibility. However, petitioner's argument is based on the faulty presumption that the disposition pursuant to § 12-10-12 is an exoneration of the charges against petitioner. Rather than exonerate petitioner, this disposition simply amounts to no finding of petitioner's guilt or innocence.

As noted, the evidence petitioner sought to introduce was the Rhode Island Attorney General's dismissal of the simple assault charge and the not-guilty filing of the resisting arrest charge for one (1) year pursuant to R.I.G.L. § 12-10-12. Section 12-10-12 of Rhode Island General Laws provides an alternative to an offender facing a determination of guilt

or innocence of the criminal charge. In pertinent part, § 12-10-12 states:

> Any judge of the district court or superior court may place on file any complaint in a criminal case. . . . It shall be an express condition of any filing in accordance with this section that the defendant shall at all times during said one year keep the peace and be of good behavior. *A violation of that express condition or any other condition set by the court shall be deemed a violation of the filing and the matter which was filed may be resurrected by the court.* . . . In the event the court filed the complaint under this section while the defendant maintained a plea of not guilty, if the court finds there to have been a violation, *it may proceed to the further disposition of the complaint according to law.* If no action is taken on the complaint for a period of one year following the filing, the complaint shall be automatically quashed and destroyed. (Emphasis added).

Thus, as evident from the face of the statute, the filing of a criminal complaint under this section is only a delay in the disposition of the charges. As noted by the Rhode Island Supreme Court, "[t]he filing of a complaint [under § 12-10-12] is a disposition tool that, in appropriate cases, affords defendants the opportunity to make a new beginning without carrying forth the weight of a criminal record for the rest of their lives." *State v. Olink*, 507 A.2d 443, 446 (R.I. 1986). It is only if the petitioner meets the condition of maintaining the peace that the charge will be dismissed. However, if petitioner fails to maintain the peace, the criminal charge that has been previously filed will be resurrected and the suspect will proceed through the normal court process.

In the instant case, it was only because petitioner stayed out of trouble for one (1) year that the criminal charge of resisting arrest was accordingly dismissed at the end of that year period. Consequently, introduction of this plea has no bearing on the credibility of petitioner or of the correctness of the charge against petitioner. Rather, it was simply a means for him to safely dispose of the criminal charge without the burden of a criminal conviction or a finding of guilt. The trial court thus correctly ruled that this evidence was irrelevant to the claims before the jury and did not abuse its discretion in excluding the same.

B. The introduction of this evidence would have only served to mislead and confuse the jury and thus was properly excluded

Evidence of the disposition of the criminal charges was also properly excluded in light of the potential for it to confuse and mislead the jury. The First Circuit has specifically recognized the dangers of a lay jury misinterpreting judicial actions. *Faigin*, 184 F.3d at 80. "[C]ourts, recognizing the attendant danger of jury confusion and unfair prejudice, frequently have approved the exclusion of judicial findings, convictions, and similar evidence on Rule 403 grounds." *Id. citing Gil-De-Rebollo v. Miami Heat Associations, Inc.*, 137 F.3d 56, 64 (1st Cir. 1998) *(upholding decision to exclude evidence of a criminal misdemeanor conviction in a related civil trial)*; *Nipper v. Snipes*, 7 F.3d 415, 418 (4th Cir. 1993) *(upholding exclusion of court order in related civil case)*; *cf. Williams v. Drake*, 146 F.3d 44, 47 (1st Cir. 1998) *(affirming, in a related civil suit, exclusion of guilty plea previously entered by petitioner before prison disciplinary board)*.

Under Fed. R. Evid. 403, the trial justice must balance probative worth against unfair prejudicial effect. In this case, petitioner alleges that the disposition of the criminal charges is probative of the party's credibility and bias. As more fully outlined above, this position is questionable. Nevertheless, even if it can be said that the disposition does have some bearing on the credibility of the parties, the prejudicial effect clearly outweighs any limited probative value petitioner assigns to the testimony. More specifically, by introducing this disposition, the jury may be led to believe that petitioner was actually exonerated of the charges. As previously discussed, petitioner's plea did not result in the determination of his guilt or innocence. The jury could nevertheless come to this conclusion and assign undue weight to this plea agreement. The jury could also be confused into believing that the dismissal of the criminal charge meant that there was no probable cause to arrest petitioner. The trial court thus did not abuse its discretion in excluding the evidence relating to the disposition of the criminal charges and the Petition for Writ of Certiorari to review the same should accordingly be denied.

III. THE EXCLUSION OF THE EVIDENCE WAS NEVERTHELESS HARMLESS

Even if this Court were to conclude that the trial court erred in excluding the proffered evidence, the exclusion of the same amounts to harmless error. The harmless error "inquiry is whether exclusion or admission of the evidence affected petitioner's substantial rights. The central question is whether this court can say with fair assurance that the judgment was not substantially swayed by the error." *Rubert-Torres v. Hospital San Pablo, Inc.*, 205 F.3d 472, 480 (1st Cir. 2000) (citations omitted). Stated another way, the essential inquiry in harmless error review is whether the proffered evidence was likely to affect the outcome of trial. *United States v. Torres-Galindo*, 206 F.3d 136, 141 (1st Cir. 2000).

In the instant case, even if the jury were informed of the disposition of the criminal charges, it would not have affected the outcome of the trial. Rather, as conceded by petitioner on appeal, this case essentially hinged upon whose version of events the jury believed. As previously noted, the disposition of the charges does not reflect an exoneration of the charges and thus does not impact either party's credibility.

In any event, petitioner's own credibility was severely tainted both by petitioner's own testimony as well as his own witnesses. In the first instance, petitioner's admission to have been diagnosed as a paranoid schizophrenic who did not take his medication provided the jury with a basis to suspect the accuracy of petitioner's recollection of events. Tr. at 52- 53. In conjunction with this psychological illness, petitioner's credibility was further tainted by petitioner's testimony that he holds the Lincoln police department responsible for his various hospitalizations over the years, his attempted suicide as well as a conspiracy with his daughter and hospital officials to gain control of his assets. *Id.* at 50-58.

Petitioner's exaggeration of the injuries he received that night further provides a basis for the jury to reject petitioner's testimony. In particular, petitioner claimed that not only was he kicked and punched by Officer Murphy during their struggle but that his face was pushed into the ground so hard, it caused him to lose consciousness three (3) times. *Id.* at 35-36, 64. The mug shot introduced into evidence, however, failed to demonstrate injuries to petitioner consistent with this testimony. *See* Exhibit A. In addition, petitioner claimed that he was thrown in the cell causing him to slam his head into the cell wall. Petitioner alleged that as a result of this fall, he suffered headaches for two (2) months. Tr. at 40-41, 64. In addition to the fact that the hospital records

failed to identify a bruise, cut or other laceration to petitioner's head reflecting this injury, *see* Exhibit 19, petitioner received no medical attention in the months after the incident to support the claimed injury to his head.

Petitioner's own doctor also cast a shadow over petitioner's credibility. Dr. Bellucci, who treated petitioner for a corneal abrasion, testified that the abrasion, which was consistent with a form of struggle described by Officer Murphy, *Id.* at 97, healed in four (4) days, *Id.* at 90. Nevertheless, petitioner inexplicitly claimed a severe loss of eye-sight. *Id.* at 45 & 46. Dr. Bellucci accordingly sent petitioner to three (3) experts. *Id.* at 82, 83, & 85. None of the experts could find a basis for petitioner's claimed loss of vision. Two (2) doctors went as far as to note that petitioner appeared to be "malingering." *Id.* at 83, 86, 87. According to Dr. Bellucci, this meant that the specialists thought petitioner was faking. *Id.* at 94. Dr. Bellucci himself, as well as the specialists, did not believe petitioner was telling the truth in his reports of the lingering effects of the injury. *Id.* at 92, 97.

All of these factors provide ample justification for the jury to have rejected petitioner's testimony. As such, it cannot be said "with fair assurance" that the judgment would have been substantially swayed by the admission of the disposition of the criminal charges. Consequently, even if it is determined that the trial court abused its discretion in excluding the evidence, such an exclusion was harmless.

CONCLUSION

For the reasons cited herein, Respondent respectfully requests that this Honorable Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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